

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RODERICK E. BRANTLEY, 08004749, §
Plaintiff, §
§
v. § **No. 3:08-CV-01511-M (BF)**
§ **ECF**
DR. CATHY S. PAVELKA, §
Defendant. §

FINDINGS, CONCLUSIONS, AND RECOMMENDATION

This case is referred to the United States Magistrate Judge for pretrial management. Before the Court for consideration is Plaintiff's Motion for Partial Summary Judgment ("Motion") [doc #16], filed December 11, 2008. The time to respond expired and Defendant failed to respond. After due consideration, the Court recommends that the Motion be denied without prejudice as premature and because genuine issues of material fact preclude partial summary judgment at this early stage of the proceedings.

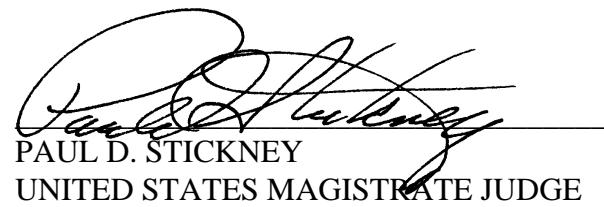
The Court has granted Defendant leave to file an amended answer. No discovery has taken place and a scheduling order has not been entered. Therefore, Plaintiff's motion is premature.

Plaintiff alleges he was damaged while he was an inmate in the Dallas County Jail because Defendant refused to prescribe his HIV medication for him. Defendant alleges that Plaintiff refused to take his HIV medication as prescribed, and that Defendant had to withdraw the prescription because failure to take the prescription regularly, as prescribed, would have been harmful to Plaintiff. Although Plaintiff denies that he refused to take the medication, the Court is required to take the facts most favorably to Defendant, the non-movant, at this point in the proceedings. Accordingly, a genuine issue of material fact exists with respect to whether Plaintiff refused his medication.

Recommendation

The Court recommends that Plaintiff's Motion be denied without prejudice.

Signed, January 14, 2009.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a true copy of these findings, conclusions, and recommendation on the parties. Pursuant to Title 28, United States Code, Section 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must serve and file written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory, or general objections. A party's failure to file such written objections to these proposed findings, conclusions, and recommendation shall bar that party from a *de novo* determination by the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, any failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).